

In re National Prescription Opiate Litigation: MDL 2804-Track Three

Summary Sheet of Concise Issues Raised

Motion: Rite Aid Defendants' Motion *in Limine* to Exclude Exhibit P-20533

Concise Description of the Issue: Should this Court exclude Plaintiffs' Exhibit P-20533?

Answer: Yes. Plaintiffs have included on their exhibit list Exhibit P-20533, a 2011 report produced by a third-party concerning certain Rite Aid processes (the "Report"), which two of Plaintiffs' putative experts (Carmen Catizone and Anna Lembke, MD) reference in their expert reports. For the reasons described below and in the memorandum filed herewith, the Court should exclude the Report under Federal Rules of Evidence 401, 402, and 403.

The Court should exclude the Report as irrelevant under Rules 401 and 402. First, the Report analyzes pharmacists' filling of individual prescriptions at certain Rite Aid pharmacies, but Plaintiffs and their experts rely exclusively on an "aggregate data" theory that is not based on any evaluation of individual prescriptions, pharmacists' decision to fill specific prescriptions, or the information available to pharmacists when they made those decisions. Second, the Report concerns only ten Rite Aid pharmacies, none of which is located in Lake and Trumbull Counties, and it aggregated data across all prescriptions of any kind filled at those locations. The Report did not separately itemize or analyze ones for controlled substances generally or opioids specifically.

The Court should also exclude the Report under Rule 403 because its probative value (if any) is substantially outweighed by the danger of unfair prejudice, confusing the issues, and misleading the jury. The Report analyzes pharmacy processes at ten Rite Aid locations outside of Lake and Trumbull Counties and concerns prescriptions not limited to controlled substances. Further, Plaintiffs' experts did not, in fact, analyze any processes at Rite Aid pharmacies in Lake and Trumbull Counties. Therefore, it would be unfairly prejudicial, misleading, and confusing to the jury for Plaintiffs to use the Report as an exhibit at trial.

For these reasons, the Rite Aid Defendants respectfully ask the Court to exclude Plaintiffs' Exhibit P-20533.

Previous Briefing and Opinions:

None.